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9 (Additional counsel listed on signature page.)

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN JOSE DIVISION

13 BROCADE COMMUNICATIONS SYSTEMS,  
INC., a Delaware corporation; and FOUNDRY  
14 NETWORKS, LLC, a Delaware limited liability  
company,

15 Plaintiffs,

16 v.

17 A10 NETWORKS, INC., LEE CHEN,  
18 RAJKUMAR JALAN, RON SZETO, LIANG HAN,  
STEVE HWANG, and DAVID CHEUNG,

19 Defendants.

20  
21 A10 NETWORKS, INC., a California corporation,

22 Counterclaimant,

23 v.

24 BROCADE COMMUNICATIONS SYSTEMS,  
25 INC., a Delaware corporation; and FOUNDRY  
NETWORKS, LLC, a Delaware limited liability  
26 company,

27 Counterclaim-Defendants.  
28

Case No. 5:10-cv-03428-LHK

**A10 NETWORKS, INC.'S  
ADMINISTRATIVE MOTION FOR  
LEAVE TO FILE "NOTICE OF  
ACTIVITY BEFORE THE PATENT  
OFFICE FROM THE ONGOING  
INTER PARTES AND EX PARTE  
REEXAMINATIONS OF THE  
ASSERTED BROCADE PATENTS"  
AND [PROPOSED] ORDER**

Judge: Honorable Lucy H. Koh

**ADMINISTRATIVE MOTION SEEKING LEAVE TO FILE NOTICE OF PATENT  
OFFICE ACTIVITY (REEXAMINATIONS OF ALL ASSERTED BROCADE PATENTS)**

Pursuant to at least Civil L.R. 7-11(a),<sup>1</sup> A10 Networks, Inc. (“A10”) respectfully seeks leave to file a “Notice of Activity Before the Patent Office from the Ongoing *Inter Partes* and *Ex Parte* Reexaminations of the Asserted Brocade Patents” (“Notice”), which contains new information relevant to the Court’s claim constructions and to A10’s Renewed Motion to Stay (“RMTS”), argument on which is set for this Thursday, March 15. The Notice that A10 requests permission to file is attached hereto as Exhibit A.

By the time that briefing on A10’s RMTS concluded (December 14, 2011), the U.S. Patent & Trademark Office (“Patent Office”) had granted all thirteen *ex parte* reexam requests. The Patent Office had also just begun acting on the *inter partes* reexam requests, first granting *inter partes* reexamination for U.S. Patent Number 7,574,508 (“the ’508 Patent”). In the three months that have since passed, the Patent Office has granted the remaining twelve *inter partes* reexam requests, and has issued Office Actions in all of them. Moreover, Brocade has been responding to the Office Actions, and taking positions on the meaning of the claim language.

The Notice will allow A10 to bring to the Court’s attention statements that Brocade has made to the Patent Office to try to salvage its claims. Those statements are not consistent with the Court’s construction of certain terms, which constructions Brocade has *not* provided to the Patent Office. The ongoing reexaminations are significant because of the *effect* that Brocade’s statements have on the claim constructions: Brocade’s statements *alter* the intrinsic evidence that this Court should consider in arriving at the legally-correct claim construction, and Brocade will continue to change the intrinsic evidence until the reexamination proceedings conclude, leaving the disputed claim terms and their legally-correct interpretation in a state of flux. *See, e.g., Krippelz v. Ford Motor Co.*, 667 F.3d 1261, 1266-67 (Fed. Cir. 2012) (affirming a claim construction that included limitations not found in the specification or the original prosecution history, and finding that the patentee’s

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<sup>1</sup> *See also e.g.*, Civil L.R. 7-3(d).

1 arguments during reexamination created “limitations [that] became part of the properly-construed  
2 claims”).

3 A10 respectfully suggests that this Court should consider the information in the Notice, and  
4 the attendant ramifications of continuing the patent side of this litigation on a parallel track with the  
5 reexaminations, before deciding A10’s Renewed Motion to Stay.

6 The supporting Declaration of Scott A. Herbst filed herewith confirms that A10 advised  
7 Brocade’s counsel of A10’s intention to seek leave to file the Notice. At the time this motion was  
8 filed, Brocade’s counsel had not indicated a willingness to stipulate to the filing of the Notice.

9 Respectfully submitted,

10 Dated: March 12, 2012

11 FINNEGAN, HENDERSON, FARABOW  
12 GARRETT & DUNNER, L.L.P.

13 By: \_\_\_\_\_/s/ Scott A. Herbst

14 Scott A. Herbst

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1 **[PROPOSED] ORDER GRANTING A10 MOTION FOR LEAVE TO FILE ITS “NOTICE**  
2 **OF ACTIVITY BEFORE THE PATENT OFFICE FROM THE ONGOING *INTER PARTES***  
3 **AND *EX PARTE* REEXAMINATIONS OF THE ASSERTED BROCADE PATENTS”**

4 A10 Networks, Inc. seeks leave to file the “Notice of Activity Before the Patent Office from  
5 the Ongoing *Inter Partes* and *Ex Parte* Reexaminations of the Asserted Brocade Patents,” attached  
6 as Exhibit A to A10’s Administrative Motion.

7 Upon good cause shown, IT IS HEREBY ORDERED that Exhibit A to 10’s Administrative  
8 Motion shall now be and is hereby considered filed in this matter.

9 March 15, 2012

10 Dated: \_\_\_\_\_

11   
12 \_\_\_\_\_  
13 Lucy H. Koh  
14 United States District Judge